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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,386	03/26/2004	Herbert Hartgrove	PGI6044P2441US	8629
32116	7590	02/10/2005	EXAMINER	
WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			SPERTY, ARDEN B	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,386

Applicant(s)

HARTGROVE ET AL.

Examiner

Arden B. Sperty

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Telephonic election 1/26/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 08/12/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

NON-FINAL OFFICE ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-4, drawn to a method of making a fabric, classified in class 28, subclass 104.
 - II. Claims 5-6, drawn to a fabric, classified in class 442, subclass 384.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by a materially different method such as by placing the second precursor web atop the first.
3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Stephen Geimer on January 26, 2005 a provisional election was made with traverse to prosecute the invention of Group II. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-4 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

6. Claims 5 and 6 are objected to because of the following informalities: Line 4 of each claim reads "or lyocell" where the appropriate text should be "of lyocell." Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,823,548 to Murphy et al in view of US 6,660,503 to Kierulff, and further in view of US 2004/0000042 to Rivera et al.

9. The Murphy reference teaches fire-resistant fabrics comprising multiple layers, each composed of same or different fibers including para-aramids, modacrylics and cotton (col. 5, lines 46-64). While the reference does not specifically disclose lyocell

fibers, lyocell and cotton are known to be functionally equivalent in the art, as supported by Kierulff, which teaches flame retardant fabrics using cotton and lyocell interchangeably. It would have been obvious to one of ordinary skill in the art to substitute lyocell for cotton to improve the hand and softness of a fabric.

10. The Murphy reference is not concerned with the means of joining the layers of fire-resistant fabrics, therefore bonding methods conventionally used in manufacture of fabrics for the disclosed uses (col. 3, line 43- col. 4, line 45) would be appropriate and obvious to one of ordinary skill in the art. Hydroentangling, with or without a pattern, is understood to be encompassed since it is a conventional method of bonding in the art. Absent a showing of unexpected results, it would have been obvious to use hydroentangling or other conventional bonding method for joining the layers of the fabric taught by Murphy. It would have been obvious to one of ordinary skill in the art to impart an image while hydroentangling, motivated by a desire for improved aesthetic properties. Support is provided by Rivera, who teaches aesthetic hydroentangling of textiles (See Rivera Abstract).

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0132368 to Price et al., in view of US 6,660,503 to Kierulff.

12. The Price reference teaches a fabric material comprising nonwoven batting layers sandwiching a ballistic grade layer (See paragraph [0018]). The nonwoven batting layers are fire-resistant since they are made of aramid, modacrylic, and natural

Art Unit: 1771

fibers (See [0019]). The layers are joined by hydroentangling (See [0027]). While the reference does not specifically disclose lyocell fibers, lyocell is known in the art to be functionally equivalent to the natural fibers taught by Price, a position that is supported by Kierulff, which teaches flame retardant fabrics using cotton, linene, lyocell, and others interchangeably. It would have been obvious to one of ordinary skill in the art to substitute lyocell for cotton to improve the hand and softness of a fabric.

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Price in view of Kierulff, as applied to claim 5 above, and further in view of US 2004/0000042 to Rivera et al.

14. The combination of Price and Kierluff teaches the structure of claim 5, as stated above, but is silent with respect to imparting an image by hydroentangling. It would have been obvious to one of ordinary skill in the art to impart an image while hydroentangling, motivated by a desire for improved aesthetic properties. Support is provided by Rivera, who teaches aesthetic hydroentangling of textiles (See Rivera Abstract).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is (571)272-1543. The examiner can normally be reached on M-Th, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571)272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arden B. Sperty
Examiner
Art Unit 1771

February 6, 2005



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SUPERVISORY PATENT EXAMINER
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